

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

October 21, 2002

RESPONSIBLE STAFF:

Jennifer Russel, Director
Planning and Code Administration

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	7/17/02
	7/25/02
Hearing Date	8/5/02
Record Held Open	Indefinitely
Policy Discussion	

TITLE:

Text Amendments T-351, T-352 and T-353

SUPPORTING BACKGROUND:

On August 5, 2002 the Planning Commission and the Mayor and Council held joint public hearings on these text amendments. On September 9th, a joint work session was held to discuss issues associated with the text amendments. Mr. Abrams had prepared a memo and a series of changes to the ordinance to support comments made at the public hearing. Mr. Abrams also prepared a memo related to the City's ability to ban opiate addiction facilities, which concluded that an ordinance to ban such facilities would be vulnerable to challenge. The text amendment has been amended accordingly. The copies enclosed highlight changes made as a result of comments at the public hearing and the September 9th work session. The latest changes to T-351, T-352 and T-353 are enumerated as followed by page. Changes are shown as shading, superscript and strikeouts, dependent upon when they were inserted into the original version. Shaded language was added after the public hearing, superscript items (small type raised above) was added after the work session.

T-351:

Page 1 - Title change to eliminate opiate addiction treatment facilities;
Page 2 - "Specified" is removed three times and more descriptive language is added. Language is added to the definition of amusement center to include the language, "or facilities which provide internet connection for use with a customer's personal computer." Language is added to the definition of tattoo parlor that says, "unless undertaken by a licensed medical doctor," in response to comments raised at the work session.

Page 4 - In subsection (b) small changes made to punctuation; opiate addition treatment facilities deleted from list of specifically prohibited uses.

T-352:

Page 2 - Section 24-136B(6)(c) is amended to add "church or religious facility." Typo "as" corrected to "an" in last line of (c).

Page 3 - Section 24-143(6)(c) is amended to add "church or religious facility,"; last line of (c) has small typo corrected; Section 24-144(b) amends language to make churches and religious facilities singular, rather than plural.

T-353:

Only a minor typo change to the title.

At their October 2, 2002 meeting, the Planning Commission recommended adoption of all amendments and sent a memo addressing two issues associated with the amendments (enclosed).

Continued

MAYOR & COUNCIL AGENDA COVER SHEET

DESIRED OUTCOME:

Announce closing of Mayor and Council record. Direct staff to prepare ordinances for adoption at November 4, 2002 Mayor and Council meeting.

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

VIA: David Humpton, City Manager

FROM: Jennifer Russel, Planning and Code Administration Director

DATE: October 3, 2002

SUBJECT: T-351, T-352, T-353 – Regulations for Internet Cafes, Tattoo Parlors, Adult-Oriented Businesses, and Body-Piercing Establishments.

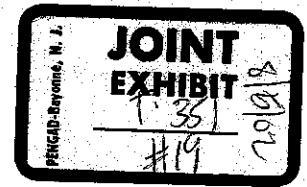
At its regular meeting on October 2, 2002, the Planning Commission made the following motion:

Commissioner Levy moved, seconded by Commissioner Winborne, to recommend ADOPTION of Text Amendments T-351, T-352, and T-353 to the Mayor and Council.

Vote: 5-0

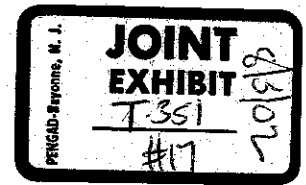
The Commission directed staff to prepare a memorandum embellishing their position on the above applications.

MEMORANDUM TO: Mayor and City Council
FROM: Planning Commission
DATE: October 15, 2002
SUBJECT: Text Amendments T-351, T-352, and T-353



As outlined in the attached CPC, the Commission agrees with the intent and scope of the above-referenced proposed text amendments; however, based on a discussion of the types of businesses cited in the ordinance, the Planning Commission respectfully recommends that the Mayor and City Council consider sponsoring a text amendment to ban nude performances in adult-oriented businesses within the City of Gaithersburg.

Commissioner Bauer suggested that while the City experienced problems with a specific internet cafe, there are many internet cafes in other areas which offer the appropriate combination of restaurant and computer use and are, in fact, desirable for a community. He voiced concern that T-351 included "internet café" in a list of businesses that are viewed objectionable and, therefore, more stringently controlled.



ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE I, ENTITLED, "IN GENERAL" SECTION 24-1, ENTITLED "DEFINITIONS" SO AS TO AMEND THE DEFINITION OF AMUSEMENT CENTER, TO INCLUDE CERTAIN TYPES OF INTERNET CAFES, AND TO PROVIDE DEFINITIONS FOR TATTOO PARLOR AND ADULT ORIENTED BUSINESSES AND BODY PIERCING ESTABLISHMENTS TO AMEND ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES", DIVISION 12 ENTITLED "C-2 ZONE, GENERAL COMMERCIAL" SECTION 24-118(7), SO AS TO AMEND REGULATIONS FOR AMUSEMENT CENTERS AS TO HOURS OF OPERATION AND INCLUSION OF REQUIREMENT FOR CERTAIN INTERNET CAFES AND AMEND DIVISION 19 ENTITLED "MXD ZONE, MIXED USE DEVELOPMENT, SECTION 24-160D.3 COMMERCIAL/EMPLOYMENT/INDUSTRIAL SO AS TO REQUIRE SPECIAL EXCEPTION APPROVAL OF USES DESIGNATED AS SPECIAL EXCEPTIONS IN THE R-B, C-B, C-1, C-2, E-1 AND I-3 ZONES AND FURTHER TO PROHIBIT TATTOO PARLORS, PAWN SHOPS, ADULT ORIENTED BUSINESSES, ^{AND} BODY PIERCING ESTABLISHMENTS ~~AND OPiate ADDICTION TREATMENT FACILITIES~~ IN THE MXD ZONE.

Text Amendment No. T-351

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article I, Section 24-1, Article III, Section 24-118(7) and Section 160 D.3(b) of the City Code be and they are hereby amended as follows:

ARTICLE I. IN GENERAL

Sec. 24-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

* * * * *

Adult-oriented establishment- An establishment which, for money or any other form of consideration devotes ~~its entire space or a significant portion of its space~~ ^[a significant or substantial portion of stock in trade], to the sale, ~~exchange, rental, loan, trade, transfer of one or more of the following:~~ ^{exchange, rental, loan, trade, transfer of one or more of the following:} 1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations or sexually-oriented paraphernalia or novelty items which are

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DIVISION 12. C-2 ZONE, GENERAL COMMERCIAL

* * * * *

Sec. 24-118. Uses permitted as special exceptions.

The following uses are permitted in the C-2 Zone as special exceptions after approval by the board of appeals in accordance with the provisions of section 24-189, or by the city council in accord with section 24-167A(c) as to subparagraph (9) below:

* * * * *

(7) Amusement center, whether operated separately or in conjunction with any other permitted or special exception use, subject to the following regulations:

- | | | | | | | |
|-----|---|---|---|---|---|---|
| (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| (c) | * | * | * | * | * | * |
| (d) | * | * | * | * | * | * |
| (e) | * | * | * | * | * | * |
| (f) | * | * | * | * | * | * |
| (g) | * | * | * | * | * | * |
| (h) | * | * | * | * | * | * |
| (i) | * | * | * | * | * | * |
| (j) | * | * | * | * | * | * |

(k) The board of appeals shall set such conditions it deems necessary and desirable; provided however the board shall not approve hours of operation to extend beyond 12:00 o'clock midnight.

- | | | | | | | |
|-----|---|---|---|---|---|---|
| (l) | * | * | * | * | * | * |
| (m) | * | * | * | * | * | * |

* * * * *

(n) Any internet café defined as an amusement center existing on the effective date of this ordinance shall have a period of one hundred eighty (180) days from September 1, 2002 to apply for special exception approval as an amusement center. Any establishment failing to make application for approval after the expiration of such one hundred eighty (180) days shall not be deemed to be a lawful non-conforming use and shall be prohibited until such special exception approval is granted.

* * * * *

DIVISION 19. MXD ZONE, MIXED USE DEVELOPMENTS

* * * * *

Sec. 24-160 D.3. Uses permitted.

* * * * *

(b) *Commercial/employment/industrials*. All uses allowed by right [or by special exception] in the R-B, C-B, C-1, C-2, C-3, E-1 and I-3 Zones are permitted uses. All uses allowed by special exception in the R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3 Zones shall be special exception uses in the MXD Zone and subject to approval by the City Board of Appeals¹. Designation of a use as a special exception in any of the zones listed herein shall mean the use is a special exception in the MXD Zone, notwithstanding the fact that such use may be allowed as a permitted use in any other zone referred to in this subsection (b). [except] The following uses [which] are specifically prohibited:

Manufacture, compounding, and processing of goods or articles.

Adult oriented business

Body piercing establishments

Pawnshops

Drive-in theaters.

Tattoo parlor

~~Opiate addiction treatment facilities~~

Automobile paint and body repair shops.

(1) The approximate location and general type of commercial, employment and industrial uses proposed on the site must be shown on sketch plan and schematic development plan submitted in accord with section 24-160D.9 and Article V, with the level of specificity increasing at each level of plans review.

(2) In order to establish an appropriately mixed character within the entire MXD zoned area, the following percentages of floor area proposed on site as shown on a sketch plan shall not exceed:

Retail commercial.....	60%
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¹ Amusement centers in the MXD Zone shall not be required to comply with the standard of subsections (1), (2) and (3) of Section 24-144(a) of this Code.

Employment/office.....	65%
Other commercial/institutional.....	15%

Individual percentages may be exceeded by approval of the city council upon application by an applicant and for good cause shown; provided, however, the cumulative total of all categories shall not exceed one hundred (100) percent.

ADOPTED by the City Council of Gaithersburg, Maryland this _____ day of _____, 2002.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2002.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2002 and the same was approved by the Mayor of the City of Gaithersburg on the _____ day of _____, 2002. This Ordinance will become effective on the _____ day of _____, 2002.

DAVID B. HUMPTON, City Manager



ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES" DIVISION 14 ENTITLED "I-1 ZONE, LIGHT INDUSTRIAL", SECTION 24-136 ENTITLED "USES PERMITTED BY RIGHT AND SECTION 136A ENTITLED "SPECIAL EXCEPTION USES" AND DIVISION 15 ENTITLED "I-3 ZONE, INDUSTRIAL AND OFFICE PARK" SECTION 24-143 ENTITLED "USES PERMITTED BY RIGHT" AND SECTION 24-144 ENTITLED "USES PERMITTED AS SPECIAL EXCEPTIONS" TO PROVIDE FOR REQUIREMENTS APPLICABLE TO ADULT ORIENTED BUSINESSES, TATTOO PARLORS AND BODY PIERCING ESTABLISHMENTS.

Text Amendment No. T-352

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article III, Sections 24-136, 24-136A, 24-143 and 24-144 of the City Code and they are hereby amended as follows:

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES.

* * * * *

DIVISION 14. I-1 ZONE, LIGHT INDUSTRIAL

* * * * *

Sec. 24-136. Uses permitted by right.

The following uses are permitted by right in the I-1 Zone:

* * * * *

B. CULTURAL, ENTERTAINMENT AND RECREATIONAL:

* * * * *

(6). Adult oriented businesses subject to the following requirements:

- (a) Goods, merchandise, materials displayed, sold, rented or bartered or live performances must not be visible from outside the establishment.

~~business must be located at least one (1000) thousand feet away from any property: (i) located in a residential zone or (ii) on which a church or religious facility, school, library, park, playground, recreational facility, daycare center or where as an other adult oriented business is located. The distance must be measured in a straight line from the front entrance of the adult oriented business to the nearest point of a boundary line to the uses described in subsection (6)(c)(i) and (ii) hereinabove.~~

- (b) Access must be prohibited to any person under the age of 21 years.
- (c) The business must be located at least one (1000) thousand feet away from any property: (i) located in a residential zone or (ii) on which a church or religious facility, school, library, park, playground, recreational facility, daycare center or where as an other adult oriented business is located. The distance must be measured in a straight line from the front entrance of the adult oriented business to the nearest point of a boundary line to the uses described in subsection (6)(c)(i) and (ii) hereinabove.
- (d) The business may operate only between the hours of 9:00 am and 9:00 pm.

* * * * *

Sec. 24-136 A. Special exception uses.

* * * * *

(9) Tattoo parlors and body piercing establishments subject to the following requirements in addition to other requirements generally for approving special exceptions and compliance with conditions imposed by the City Board of Appeals:

- (a) The business premises must not be located on property where the business is located within one thousand (1000) feet of the boundaries of property containing a school, church, religious facility or other tattoo parlor or body piercing establishment or any residentially zoned property including property in the MXD Zone.
- (b) The business premises may only operate between the hours of 9:00 am and 9:00 pm.
- (c) The business must conform to any applicable state and local health and safety regulations.
- (d) No instruments or equipment shall be used which has not been sterilized for use on any customer or client.

* * * * *

DIVISION 15, I-3 ZONE. INDUSTRIAL AND OFFICE PARK

Sec. 24-143. Uses permitted by right.

* * * * *

(6). Adult oriented businesses subject to the following requirements:

- (a) Goods, merchandise, materials sold, rented or bartered or live performances must not be visible from outside the establishment.
- (b) Access must be prohibited to any person under the age of 21 years.
- (c) The business must be located on the property where the boundary line is at least 1000 feet away from any property (i) located in a residential zone or (ii) on which a church or religious facility, school, library, park, playground, recreational facility, daycare center or where any other adult oriented business is located. The distance must be measured in a straight line from the front entrance of the adult oriented business to the nearest point of a boundary line to the uses described in subsection (6)(c)(i) and (ii) hereinabove.
- (d) The business may operate only between the hours of 9:00 am and 9:00 pm.

* * * * *

Sec. 24-144. Uses permitted as special exceptions.

The following uses are permitted in the I-3 Zone as special exceptions after approval by the board of appeals:

- | | | | | | | |
|-----|------------------|---|---|---|---|---|
| (a) | Amusement center | * | * | * | * | * |
| (a) | | * | * | * | * | * |
| (b) | | * | * | * | * | * |
| (c) | | * | * | * | * | * |

[(a)](b) Pawn shops, provided that a pawn shop is not located within one thousand (1000) feet of the boundaries of property containing a school, churches, religious facilities, or any other pawnshop or any residentially zoned property, including

property in the MXD Zone designated on an approved schematic development plan or sketch plan for residential use, and said use shall comply with the requirements of Chapter 44A, Montgomery County Code as amended. Pawnshops existing as of the effective date of this amendment shall conform to the provisions of section 24-167C(2) of the City Code.

(c) Tattoo parlors and body piercing establishments subject to the following requirements in addition to other requirements generally for approving special exceptions and compliance with conditions imposed by the City Board:

- (1) The business premises must not be located ~~on property~~ within one thousand (1000) feet of the boundaries of property containing a school, church, religious facility or other tattoo parlor or body piercing establishment or any residentially zoned property including property in the MXD Zone.
- (2) The business premises may only operate between the hours of 9:00 am and 9:00 pm.
- (3) The business must conform to any applicable state and local health and safety regulations.
- (4) No instruments or equipment shall be used which has not been sterilized for use on any customer or client.

* * * * *

ADOPTED by the City Council of Gaithersburg, Maryland this _____ day of _____, 2002.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2002.

SIDNEY KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2002 and the same was approved by the Mayor of the City of Gaithersburg on the _____ day of _____, 2002. This Ordinance will become effective on the _____ day of _____, 2002.

DAVID B. HUMPTON, City Manager

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redlined draft 3 as of 09-25-02



ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES", DIVISION 1A. ENTITLED "GENERALLY" SECTION 24-22 SO AS TO MORE DEFINITELY STATE THE STATUS OF LAND USES PERMITTED AND PROHIBITED IN EACH ZONING DISTRICT AND FURTHER TO RETITLE SUBSECTION (b) TO APPLY TO THE R-6 ZONE.

Text Amendment No. T-353

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article III, Division 1A, Section 24-22(a) and (b) of the City Code be and are hereby amended as follows:

ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES

DIVISION 1A. GENERALLY

Sec. 24.22. Permitted and special exception uses.

(a) Except as provided elsewhere in this chapter, no use shall be allowed except as indicated in the table provided in [subsection (b) of this section] the text of each zoning district as follows:

- (1) Permitted uses are designated by the letter "P" or otherwise identified as permitted uses or uses permitted by right on any lot or parcel in the zone indicated, subject to all applicable regulations.
- (2) Special exception uses are uses designated by the letters "SE" or otherwise identified as uses permitted as special exception[s] or special exception uses and may be authorized by the city board of appeals, in accordance with all applicable regulations and requirements.
- (3) Prohibited uses are uses not identified as permitted uses, special exception uses or conditional uses in any specific zoning district in this chapter or specifically identified as a prohibited use in any specific zoning district. Lawful accessory uses and lawful non-conforming uses are not prohibited uses.

(b) *[Residential zones]* R-6 Zone.

* * * * *

ADOPTED by the City Council of Gaithersburg, Maryland on this _____ day of _____, 2002.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this _____ day of _____, 2002.

SIDNEY KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2002 and the same was approved by the Mayor of the City of Gaithersburg on the _____ day of _____, 2002. This Ordinance will become effective on the _____ day of _____, 2002.

DAVID B. HUMPTON, City Manager

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– generally redlined draft 3 as of 09-25-02